

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ANTHONY LEO,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 04-11006-JLT
)	
COMMONWEALTH OF)	
MASSACHUSETTS,)	
)	
Respondent.)	
_____)	

ANSWER AND AFFIRMATIVE DEFENSES

Pursuant to Rule 5 of the Rules Governing Section 2254 Cases, the respondent, Commonwealth of Massachusetts, through counsel, answers the numbered paragraphs of the petition for writ of habeas corpus as follows:

1. Admitted.
2. The respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the petition for writ of habeas corpus and calls upon petitioner to prove same.
3. Admitted.
4. The respondent admits that the petitioner has been indicted for (4) counts of aggravated rape, two (2) counts of breaking and entering in the daytime to commit a felony, and two (2) counts of larceny from a building.
5. Admitted.

6. The respondent admits that the petitioner has not yet stood trial for the crimes of which he is accused.
7. Admitted.
8. The respondent admits that the petitioner has appealed from the judgment concerning bail in this case.
9. The respondent admits that the grounds stated in paragraph 9 of the petition are the grounds for relief are the grounds which the petitioner presented to the Massachusetts Supreme Judicial Court. The respondent denies each and every allegation of fact contained in paragraph 9 of the petition for a writ of habeas corpus. To the extent that paragraph 9 of the petition for a writ of habeas corpus contains conclusions of law, they require no response. Further answering, the respondent states that paragraph 9 fails to state a claim upon which relief may be granted and that the petitioner has failed to exhaust the claim stated therein.
10. The respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the petition for writ of habeas corpus and calls upon petitioner to prove same.
11. The respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the petition for writ of habeas corpus and calls upon petitioner to prove same.
12. With respect to the allegations of fact contained in paragraphs 12(A-D) of the petition, the respondent states that the state court record speaks for itself. The respondent denies each and every allegation of fact that does not comport exactly

with the state court record of the petitioner's criminal proceedings or with the state court's finding of the facts with respect to any aspect of the petitioner's state court proceedings. To the extent that paragraph 12(A-D) of the petition for writ of habeas corpus contains conclusions of law, they require no response. Further answering, the respondent states that paragraph 12 (A-D) of the petition does not state a claim upon which relief may be granted.

13. Left blank by the petitioner.

14. Admitted.

15(a-d). Admitted.

15(e). Denied. On appeal to the Massachusetts Supreme Judicial Court, the petitioner was represented by John M. Goggins, Esq., 47 Harvard Street, Worcester, Massachusetts. Subsequently, the petitioner filed an amended brief and record appendix in the SJC *pro se*. See Supplemental Answer, filed herewith, Exhibits 2 and 3.

15(f-g). Left blank by the petitioner.

16. The respondent admits that the petitioner has not yet been sentenced in connection with his state court criminal proceedings.

17(a). The respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17(a) of the petition for writ of habeas corpus and calls upon petitioner to prove same.

17(b). Denied.

17(c). The respondent is without knowledge or information sufficient to form a

belief as to the truth of the allegations contained in paragraph 17(c) of the petition for writ of habeas corpus and calls upon petitioner to prove same.

AS A FURTHER ANSWER to the petition for a writ of habeas corpus, the respondent files herewith a Supplemental Answer, which contains copies of the following documents:

1. Docket Sheet for *Commonwealth v. Anthony Leo*, Worcester Superior Court Criminal Action No. 2002-00830;
2. Brief and Record Appendix for the Defendant, *Commonwealth v. Anthony Leo*, Supreme Judicial Court Docket No. SJC-09074;
3. Amended Brief and Record Appendix for the Defendant, *Commonwealth v. Anthony Leo*, Supreme Judicial Court Docket No. SJC-09074; and
4. Docket Sheet for *Anthony Leo v. Commonwealth*, Supreme Judicial Court Docket No. SJC-09074.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The petition fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The petition should be dismissed since it contains claims which were not presented to the Massachusetts Supreme Judicial Court, and which were, therefore, not exhausted in the state court.

Third Affirmative Defense

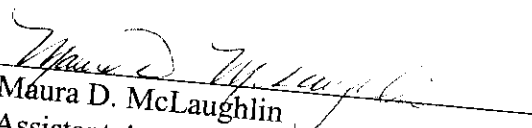
The petition should be dismissed since granting this petition would substantially interfere in a pending state court action.

Fourth Affirmative Defense

The petition should be dismissed since it contains claims which are premature at the pre-trial phase of the petitioner's state court proceedings.

Respectfully submitted,

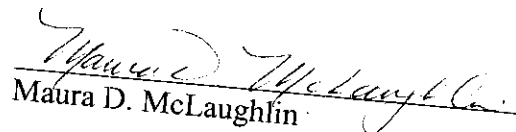
THOMAS F. REILLY
ATTORNEY GENERAL


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Dated: July 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the petitioner, Anthony M. Leo, on July 20, 2004, by depositing the copy in the office depository for collection and delivery by first-class mail, postage pre-paid, as follows: Anthony M. Leo, Old Colony Correctional Center, One Administration Road, Bridgewater, Massachusetts, 02324.


Maura D. McLaughlin